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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re A.B. et al., Persons Coming Under the
Juvenile Court Law.

MADERA COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

B.B.,

Defendant and Appellant.

F077561

(Super. Ct. Nos. MJP017853,
MJP017854, MJP017855)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Madera County. Thomas L.
Bender, Judge.

S. Lynne Klein, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of County Counsel, Miranda P. Neal and Derek Walzberg, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Levy Acting P.J., Poochigian, J. and Smith, J.

Appellant B.B., Sr. (father) appeals from the juvenile court's orders terminating his parental rights over now six-year-old Aubrie B., four-year-old Emma B. and two-year-old B.B. (Welf. & Inst. Code, § 366.26.)¹ He contends the termination order was error because there was insufficient evidence the children were adoptable. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

In October 2016, the Madera County Department of Social Services (department) took then four-year-old Aubrie, 23-month-old Emma and three-month-old B.B. into protective custody after D.B. (mother)² was arrested and the children could not be safely left with father because of his substance abuse. The arresting officer showed the social worker a video of father injecting methamphetamine into his arm taken with mother's cellphone. Father accused mother of hitting him and breaking a car window. Mother had bloody knuckles, consistent with having hit someone or something. The parents were known to the police department for their ongoing domestic violence, requiring police response multiple times over the previous week. The department placed the children together in foster care.

Aubrie told the investigating social worker her parents fought using their hands in front of her and her siblings. Father hit her mother "all the time" and she saw "bruises all over [mother's] body." She said mother hit her father "sometimes." Aubrie would "sock" father if she saw him hit her mother and demonstrated by punching with her fists. Seeing her parents fight scared her.

In December 2016, the juvenile court exercised its dependency jurisdiction over the children at the dispositional hearing and ordered the parents to participate in domestic violence, mental health, substance abuse, and parenting services.

¹ Statutory references are to the Welfare and Institutions Code.

² Mother also filed an appeal from the juvenile court's termination orders, which we affirmed. (*In re Aubrie B. et al.* (Dec. 10, 2018, F077419) [nonpub. opn].) On May 31, 2018, this court took judicial notice of the record in case No. F077419.

By the six-month review hearing in June 2017, the children had been placed with their maternal grandmother, Cindy S. Aubrie was receiving behavioral counseling for being aggressive with her siblings. The parents were homeless and participated minimally in their services plan. Mother appeared with her attorney at the six-month review hearing and submitted on the department's recommendation to terminate reunification services. Father did not personally appear. The juvenile court terminated reunification services and set a section 366.26 hearing for October 2017.

In September 2017, the department removed the children from Cindy's custody and filed a supplemental petition (§ 387), after discovering that Cindy was allowing mother to care for the children even though mother continued to abuse drugs. Mother disclosed that she gave birth to a baby earlier in the month and she and the baby tested positive for amphetamine. She said Cindy asked her to care for the children because she was sick. In October, Cindy tested positive for methamphetamine, amphetamine, and THC by hair follicle analysis.

The juvenile court continued the section 366.26 hearing to November 2017, and set a hearing on the supplemental petition for the same date. At the November hearing, the court accepted the parents' submission of the case and sustained the supplemental petition. The court agreed to proceed without disposition, ordered the children to remain in foster care, and continued the section 366.26 hearing.

In December 2017, mother was involuntarily discharged from a drug treatment facility for testing positive for methamphetamine and father was incarcerated. Around this same time, the department received reports that Aubrie and Emma were displaying sexualized behavior in foster care. In addition, all the children were anxious and aggressive with each other before and after visits with mother. Aubrie had "melt down[s]" on days she visited mother. On one occasion, the foster parent had to stop six times on the way back from a visit with mother because Aubrie was scratching her face and scratching and hitting her siblings. She required assurance before and after visits that

she was safe. Emma scratched, bit, and punched Aubrie and B.B. without provocation and had nightmares. Though fully potty-trained, she had several accidents the day of and after visits. B.B. screamed the day before and after visits. He pinched, bit, and hit his sisters and pulled their hair. His nightmares and night terrors increased significantly and he violently thrashed in his crib. The children's reactions to visiting father were even more pronounced. Emma held a bag during their commute to the jail because she felt nauseated.

In January 2018, mother entered the Rescue the Children Program but was discharged three days later for not complying with the program rules. On February 6, 2018, she was admitted to Lighthouse Recovery Program, an inpatient drug treatment facility.

Meanwhile, the department removed Aubrie from the foster home she shared with her siblings after she disclosed that she touched Emma's "privates." She also stated "he touched me" but was unable to identify who "he" was or where or how it happened. Emma confirmed that Aubrie touched her "privates" two or three times and pointed between her legs. Approximately two weeks later, Emma and B.B. were moved to another home after their foster parents were decertified because they were dishonest about their foster family agency certification.

Prior to the section 366.26 hearing, mother's attorney filed a section 388 petition asking the juvenile court to reinstate mother's reunification services because she enrolled herself in a drug treatment program and continued to visit the children. She believed providing her services would benefit the children by reestablishing their relationship with her. A hearing on mother's section 388 petition was scheduled in March 2018 to coincide with the section 366.26 hearing.

The department recommended the juvenile court deny mother's section 388 petition, opining it was too early to gauge her progress in drug treatment and unlikely she could reunify with the children if given more time. The department also informed the

court it planned to transition Aubrie to her siblings' foster home so the three children could be adopted as a sibling group. Although the department had not identified a prospective adoptive home for the children, it considered them adoptable because they were young and developmentally on target. It acknowledged Aubrie had some moderate behavioral concerns but she was addressing them in weekly therapy. She did not understand the concept of adoption and stated she wanted her "mommy and daddy." Three-year-old Emma was very quiet and shy initially but had progressed and flourished since being in a stable foster home. She was strongly bonded to her brother and was very protective of him.

The department reported that mother regularly visited the children at the departmental facility. She was engaging and successfully redirected them and the children responded well to her. Father had two monthly visits with the children at the county jail, which was traumatizing to Aubrie. She cried inconsolably, refused to be transported, and clawed at her face. Emma appeared scared and uncomfortable and would not speak to her father on the phone. B.B., on the other hand, entertained himself with the computer screen and telephone.

In March 2018, the juvenile court conducted a contested hearing on mother's petition and the department's recommendation to terminate parental rights. The court denied mother's section 388 petition and terminated parental rights after finding the children were likely to be adopted and none of the exceptions to adoption applied.

DISCUSSION

At a section 366.26 hearing, the juvenile court must determine by clear and convincing evidence whether it is likely the minor will be adopted. (§ 366.26, subd. (c)(1).) If the court finds a likelihood of adoption, the court must terminate parental rights absent evidence termination would be detrimental to the minor under one of the exceptions to adoption. (§ 366.26, subd. (c)(1)(B)(i)-(vi).) Here, the juvenile court found none of the exceptions to adoption applied and father does not challenge its termination

order on that ground. Rather, he contends the court erred in finding the children were likely to be adopted.

In determining adoptability, the juvenile court assesses the child's age, physical condition, and emotional state and how these characteristics affect a prospective parent's willingness to adopt the child. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) "To be considered adoptable, a [child] need not be in a prospective adoptive home and there need not be a prospective adoptive parent ' "waiting in the wings." ' " (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.)

Father contends the juvenile court's finding the children were likely to be adopted is error because it found they were adoptable "as a sibling set" yet the evidence they had emotional and behavioral problems raised questions about whether they were each "generally adoptable." If any one of them was not generally adoptable, he argues, then none of them are adoptable and the court erred in terminating parental rights. Father points, for example, to Aubrie's public masturbation and self-harm, Emma's regression in potty-training and the siblings' aggressive treatment of each other as evidence they were not adoptable individually or as a sibling group.

On review, we determine whether there is evidence, contested or uncontested, from which a reasonable court could conclude a child is likely to be adopted. (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.) Moreover, we review the record in the light most favorable to the juvenile court's findings and draw all inferences from the evidence that support the court's determination. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1177.) We conclude substantial evidence supports the juvenile court's finding the children were likely to be adopted.

First, there is no express or implied statutory presumption that a sibling relationship prevents separate adoption of the siblings. (See *In re Clifton B.* (2000) 81 Cal.App.4th 415, 426-427; *In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187.) The statutory scheme reflects the importance of sibling relationships in dependency

proceedings, but there is no statutory mandate or presumption that siblings must be adopted as a group, and no statute that displaces adoption as the preferred permanent plan. (§ 366.26, subd. (c)(1).)

Further, whether a child is “generally” or “specifically” adoptable is an unnecessary distinction. A child is considered “generally adoptable” if the child’s traits, e.g., age, physical condition, mental state, and other relevant factors, do not make it difficult to find an adoptive parent. A child is “specifically adoptable” if the child is adoptable only because of a specific caregiver’s willingness to adopt. (*In re R.C.*, *supra*, 169 Cal.App.4th at pp. 492-494.) However, section 366.26 does not use those terms and the juvenile court is not required to assess adoptability on that basis. Instead, section 366.26 merely requires the juvenile court to determine if the child is likely to be adopted within a reasonable time.

Here, there was nothing about the children to indicate they would not be adopted in a reasonable time. They were healthy and developmentally on target. Aubrie, described as “very intelligent,” was doing well in school and making friends. Though she and Emma were displaying some emotional problems, they were receiving therapy and apparently benefitting. Further, father fails to show that any of the behavior he cites would make it difficult for the department to find an adoptive home for the children as individuals or as a sibling set in light of other characteristics that make them attractive to prospective adoptive parents, such as their young age and good physical and mental health.

Father also contends the absence of prospective adoptive parents precludes a finding the children are likely to be adopted. However, as we stated above, the children need not be in a prospective adoptive home nor must there be prospective adoptive parents waiting to adopt for the juvenile court to find the children adoptable.

We find no error and affirm.

DISPOSITION

The juvenile court's orders terminating parental rights are affirmed.